IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No. 20 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

COMMISSIONER OF WEALTH-TAX - Applicant(s)
Versus
MAHENDRABHAI D PARMAR - Respondent(s)

==========

Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
NOTICE UNSERVED for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Mrs. Bhatt, learned counsel for the Revenue. The Tribunal has referred the following question to us for our answer;

> “Whether, the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to exclude the sum of Rs. 4,81,957/- being assets of Mahendra Dhanjibhai Parmar Family Trust, wherein the assessee was the beneficiary from the net wealth of the assessee ?”.

2. Mrs. Bhatt, learned counsel for the applicant submits that the assessee is an individual and is partner to the extent of 8% profits in M/s. Kinarivala R.J.K. Industries, a partnership firm, he created a family Trust known as “Mahendra Dhanjibhai Parmar Family Trust”. She also submitted that out of 8% share, 4 per cent be appropriated in favour of the said Trust

so that the money is used in the interest of the beneficiaries.

3. Relying upon the Judgment of the Supreme Court in the matter of ***Commissioner of Income-Tax Vs. Sunil J. Kinariwala, [2003] "259 ITR 10"***, she submitted that in relation to another partner of the said firm the submission was that if because of the settlement the income does not come in the hands of the said partner it would not continue to be his income and could not be included in the returned income. In the said matter, she relied upon the following observation;

> *"When a third person becomes entitled to receive the amount in question under an obligation of the assessee even before the assessee could lay a claim to receive it as his income, there*

would be a diversion of income by overriding title; but when after receipt of the income by the assessee, the same is passed on to a third person in discharge of the obligation of the assessee, it will be a case of application by the assessee and not of diversion of income by overriding title."

4. She submits that if the amount transferred in favour of the Trust would continue to be income of the assessee, then creation of the wealth by the said transferred amount would be wealth of the assessee.

5. We heard Mrs. Bhatt at length. We expressed our opinion that the provisions of the Income Tax Act and Wealth Tax Act are different. Income Tax refers to the income refers to a person who entitles to receive it and

appropriation of the income or its application, but Wealth Tax applies in a case where the wealth belongs to a particular person and he has a power of disposition. We pointed out to Mrs. Bhatt that, in the present case, if the part of the income of the assessee goes to the Trust, then the wealth would be created in favour of the Trust and as the assessee would have no power of disposition, transfer/alienation in any manner, the property cannot be included in the wealth of the assessee. Though Mrs. Bhatt resisted the suggestion of the Court for some time, however she herself brought to the notice of the Court yet another Judgment of the Supreme Court in the matter of ***Commissioner of Wealth Tax Vs. Lov S. Kinariwala*** (yet another partner of the partnership) reported in the very same Volume, i.e., ***259 ITR at Page 440***. The argument of the learned counsel for the Revenue runs contrary to the very judgment. If that be so, the argument of the learned counsel is to be rejected as a

whole. The question is answered in favour of the assessee and against the Revenue.

[R.S. Garg, J.]

[M.R. Shah, J.]

RMR.